

**Department Of Health And Human Services
Public Health Service
Health and Human Services Administration
Bemidji Area Indian Health Service
Bemidji, Minnesota**

Bemidji Area Indian Health Service Circular No. 01-02

Alternative Dispute Resolution (ADR) Policy

- Sections:
1. Purpose
 2. Background
 3. Policy
 4. References
 5. Definitions
 6. Procedures
 7. Responsibilities
 8. Administrative Procedures

1. **PURPOSE** The purpose of this circular is to provide additional time and dimension to the informal processing of EEO complaints. It provides an avenue for the complainant and management to attempt to resolve an allegation of discrimination at the lowest organizational level. This process is included in the informal process. However, if the ADR is not effective, the complainant may continue seeking relief through the formal counseling process.
2. **BACKGROUND** Various models of Alternative Dispute Resolution have been shown to be a cost effective mechanism for informal resolution of discrimination allegations, when used at the lowest organizational level or when the complaint is first brought to the attention of supervisors and EEO officials.
3. **POLICY** It shall be the policy of the Bemidji Area Indian Health Service to implement the ADR process to address and attempt resolution of Equal Employment Opportunity complaints, at the lowest possible level.

4. **REFERENCES**

Public Law 101-552 (Administrative Dispute Resolution Act)
29 CFR 1614 Federal Sector EEO Complaint Processing
EEOC Management Directive MD-110

5. **DEFINITIONS**

- A. EEO Manager-Is the Regional EEO Manager of the Bemidji Area IHS. The role of the

EEO Manager is overall coordination of the ADR program, requesting the services of qualified mediators, and ensures that any settlement agreement reached during the ADR process is administratively legal and binding on both parties.

- B. EEO Counselor/Specialist-Employees who work full time at the Bemidji Area IHS, in the Office of Equal Employment Opportunity. The role of the EEO Counselor/Specialist is to act as mediator between the complainant and the Responsible Management Official, or their designee in resolving EEO Complaints.
- C. Contract/Outside Mediator-Contractors or Department of Health and Human Services employees, who possess special knowledge, skills, and abilities to mediate disputes between employees and managers.
- D. Responsible Management Official-The principle responding official who has the authority at the Service Unit Director or Area Office Associate Director level to negotiate the EEO settlement agreement.
- E. Area Director-Within delegated authority, has final authority to approve EEO Settlement agreements.
- F. Complainant/Aggrieved Person-The employee/applicant who has requested EEO counseling and has agreed to participate in the ADR process.

6. **PROCEDURES** When an EEO counselor receives a request for EEO counseling, the counselor must take the basic information required under the EEO procedures. This includes personal information of complainant, date of contact, date of initial counseling, location of complaint, basis of complaint, issues involved, relief requested, and whether the complainant will voluntarily participate in the ADR process.

- A. If the complainant does not volunteer to participate in the ADR process, the EEO counselor/specialist proceeds to attempt resolution and fact finding, in accordance with 29 CFR 1614 Regulations and MD 110 (EEOC Management Directive).
- B. If the complainant chooses to volunteer or participate in the ADR process, the counselor/specialist shall immediately notify the EEO Manager.
 - (1) The EEO counselor/specialist and EEO Manager will consult and make assessment on whether the complaint is appropriate and feasible for ADR procedures.
 - (2) If ADR is not feasible, the counselor shall notify the complainant that ADR is not an option, and will continue the fact finding in accordance with regulations cited above.
 - (3) If ADR is feasible, the complainant will be notified and given the following options of ADR:
 - (a) Service Unit Management/Area Office Management EEO Intervention

- C. This ADR program involves the Responsible Management Official or their designee to meet with the Area EEO Counselor/Specialist, the complainant, and their representative to attempt resolution of the complaint. The EEO counselor/specialist will act only as a neutral party, and as a advisor to both sides in order to inform both parties of laws and regulations involving the process. If settlement is reached, the settlement agreement is written up and concerned parties will sign the agreement. The EEO counselor/specialist will forward the settlement agreement to the EEO Manager to ensure that the agreement is legal and binding on both parties.

- D. (b) Neutral Third Party/HHS Mediation

This part of the ADR program involves contracting with an outside individual or with HHS personnel, who are trained and certified as mediators. If the complainant has agreed to participate in the ADR, and the EEO counselor/specialist and EEO Manager have agreed that ADR is feasible, then the EEO Manager shall notify either a contract mediator or the Department of Health and Human Services mediation team and request their services. All costs of mediation will be paid by the respective Service Unit, Area Office, or Program.

7. RESPONSIBILITIES.

- A. Office of Equal Employment Opportunity

Responsible for coordination of the ADR process, as it involves discrimination based on race, sex, color, national origin, religion, age, disability, different sexual orientation, or reprisal for prior participation in the protected process. The Area EEO Manager serves as the technical advisor for involved parties on the ADR process and will evaluate the effectiveness of the process after each application.

The Area EEO counselors/ specialists will provide advisory services for the complainant and the responsible management official , and will be responsible for providing relevant documents to each party.

Responsible for ensuring that all settlement agreements are in compliance with all laws, rules, regulations, and policies.

- B. Service Unit Director (SUD)/Associate Directors (AD)

Responsible for payment of all mediation services, including submissions of all contracts or other documents as provided for in regulations or IHS policy.

Responsible for coordinating with the contractor and the EEO Office, on ensuring all employees are present when mediation services are conducted, and documents needed from the local level are provided to both sides during mediation.

Responsible for ensuring that managers and supervisors involved take a pro-active commitment, and making good faith effort in participating in the problem resolution attempts and adhering to established time frames.

Complainants and their Representatives.

Responsible for providing documentation requested by EEO/Mediator in a timely manner.

Responsible for taking a pro-active commitment toward resolution of the complaint or issue(s) involved in the complaint.

8. Administrative Procedures:

- A. If at the initialing counseling session, the complainant elects mediation, the counselor will obtain from the complainant written approval to extend the counseling period for 60 calendar days (90 days total) and forward it to the EEO Manager, along with the complainant's request for the type of mediation (see above).
- B. The counselor/specialist will conduct an immediate fact finding to determine the issues and basis of the complaint, and will submit a draft counselors report, showing issues and basis of the complainant, to the EEO Manager. This report is to be submitted within 10 days of the initial counseling session.
- C. If the complainant, does not elect mediation, the complaint process will continue in accordance with 29 CFR 1614 regulations, and the final counselors report will be submitted to the complainant within the 30 day period.
- D. If the complainant elects mediation using SU Management/AD Management intervention, the EEO counselor/specialist will coordinate with the Service Unit Director, Associate Director, and EEO Manager on providing mediation services at the local level. This must be accomplished within 45 days of the date of the initial request for counseling.
- E.. If settlement is reached during this mediation process, the settlement agreement must be forwarded to the EEO Manager to ensure adherence to all applicable laws, rules, regulations, and policies. The settlement agreement must be submitted to the EEO Manager within 2 days after the mediation. If the EEO Manager, and the appropriate responsible management officials approve the settlement, the agreement must be signed

and sent back to the complainant, their representative, and other management officials for final signature. This must be done within 7 days of the date of mediation..

- F. The settlement agreement will only be implemented after all delegated authorities signatures have been obtained. The EEO Office will be responsible for notifying all concerned to implement the agreement. This shall be done by the end of the 60 days extension agreed upon by the complainant.
- G. If the complainant elects to choose mediation from part (b) above, the EEO counselor/specialist shall adhere to paragraph (1) above. The draft report should contain specific issues and basis of the complaint.
- H. The EEO counselor/specialist, or the EEO Manager shall contact the outside mediation services under contract and discuss the issues and basis of the complaint, and receive their input as to whether the complaint can be mediated. This shall be done within 10 days from the initial counseling session.
- I. The EEO Office shall notify the Service Unit Director/Associate Director, who shall then submit all paper work needed to contract the mediator's services. All such documentation shall be in accordance with applicable contract law and regulations. The EEO Office will be able to provide names of certified mediators.

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Date